

REMARKS

This amendment is submitted in order to be responsive to the Examiner's requirement for restriction and requirement of election of species.

In response to the requirement for restriction, Applicants provisionally elect to prosecute the claims of Group I. The election is made with traverse.

In response to the requirement of election of species, Applicants elect to prosecute claims directed to avipoxviruses containing the vaccinia virus host range gene C7L. New claim 31 is the elected species claims. All claims now presented are readable on the elected species.

Applicants traverse the requirement for restriction. there is a novel technical feature that links all of the claims together. The novel technical feature is more than an avipoxvirus comprising in the viral genome a Vaccinia virus host range gene. The novel technical feature further requires that the avipoxvirus comprising in the viral genome a Vaccinia virus host range gene, be capable of surprising growth in permissive cells, such as CEFs, to obtain a surprisingly high viral titer. In Example 2 and Fig. 6 of the present invention, Applicants have provided directly comparative data showing that a canary poxvirus containing the host range gene from Vaccinia virus C7L exhibited a titer one order of magnitude greater than did a corresponding recombinant canary

poxvirus without the host range gene C7L, but with only a marker gene. It is known in the art that it is difficult to obtain high titers of avipoxviruses, such as canary poxviruses, even where grown on permissive cells such as CEF, and so it is indeed surprising and unobvious that Applicant could obtain the novel avipoxvirus containing the C7L host range gene in a high titer according to the present invention.

According to page 7 of the present application, there is no disclosure in FANG et al of this benefit of the surprisingly high viral titer. Since FANG et al does not describe experiments which compare the growth characteristics of their construct in CEF cells, the reference neither discloses nor suggests that an avipoxvirus comprising in its genome a Vaccinia virus host range gene has surprising growth characteristics in permissive cells such as CEFs to obtain a high viral titer. Thus under the PCT Rules, there is unity of invention among all of the claims and the requirement for restriction should not be maintained.

Applicants have amended the claims to eliminate improper multiple dependencies. Only properly multiple dependent claims remain in the application. Claim 28 has been amended so that it is now a properly multiple dependent claim. Claims 29 and 30 have been added to cover the subject matter deleted from claim 28 in removing the improper multiple dependencies.

Applicants authorize that the payment for multiple dependent claims be charged to the credit card of the undersigned attorneys and enclose PTO 2038 to cover the payment of this fee.

Any deficiency in the payment of the fees due to the US patent and Trademark Office may be charged to the deposit account of the undersigned attorneys. The number is 18-2025.

An action "on the merits" is awaited.

Respectfully submitted,
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